

Message Text

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ACTION EA-14

INFO OCT-01 EUR-25 NEA-14 ISO-00 IO-14 CIAE-00 DODE-00

PM-07 H-03 INR-11 L-03 NSAE-00 NSC-07 PA-04 RSC-01

PRS-01 SP-03 SS-20 USIA-15 OMB-01 TRSE-00 SAJ-01

NIC-01 DPW-01 DRC-01 /148 W
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R 191025Z AUG 74

FM AMEMBASSY SAIGON

TO SECSTATE WASHDC 7925

INFO AMCONSUL BIEN HOA

AMEMBASSY BUDAPEST

AMCONSUL CAN THO

AMCONSUL DANANG

AMEMBASSY JAKARTA

AMEMBASSY MOSCOW

AMCONSUL NHA TRANG

AMEMBASSY TEHRAN

USDEL JEC PARIS

AMEMBASSY WARSAW

C O N F I D E N T I A L SECTION 1 OF 2 SAIGON 10926

E.O. 11652: GDS

TAGS: MARR, VS, IR, ID, HU, PO

SUBJECT: REFUTATION OF COMMUNIST POSITION ON ICCS ACTIVITY

REF: SAIGON 10864

1. THE POLISH AND HUNGARIAN DELEGATIONS HAVE BEEN MAINTAINING THAT THE ICCS CANNOT PERFORM CERTAIN OF ITS SUBSTANTIVE FUNCTIONS, IN PARTICULAR FORMAL INVESTIGATIONS, WHILE THE "PRG" IS BOYCOTTING THE TPMJC. THIS MESSAGE WILL SET FORTH THE POLISH AND HUNGARIAN CONTENTION, THE BACKGROUND TO IT, AND THE REFUTATION OF IT MAINTAINED BY THE USG, GVN, INDODEL AND IRDEL.

2. POLISH-HUNGARIAN POSITION: THE POLISH-HUNGARIAN CONTENTION, CONFIDENTIAL

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MOST RECENTLY RE-STATED IN THE ICCS MILITARY COMMITTEE SESSION OF

AUGUST 13 (REFTEL), IS BASED ON THE ARGUMENT THAT THE ICCS IS ONLY

AN EXECUTIVE ORGANIZATION CREATED TO CARRY OUT THE ORDERS OF THE TPJMC WHEN THE LATTER IS ACTING AS A CORPORATE BODY, AND THAT IF THE TPJMC IS NOT FUNCTIONING UNANIMOUSLY, THE ICCS CAN NOT ACT ON ANY REQUESTS FOR AN INVESTIGATION, FROM EITHER PARTY. THE PROVISIONS OF THE PARIS AGREEMENT WHICH THE COMMUNISTS CITE MOST FREQUENTLY IN ADVANCING THIS POSITION ARE 18 (C) OF THE MAIN AGREEMENT, WHICH CONTAINS THE GENERAL STATEMENT "THE TWO SOUTH VIETNAMESE PARTIES SHALL AGREE IMMEDIATELY ON THE LOCATION AND OPERATION OF THESE TEAMS;" AND ARTICLE 10 (C) OF THE ICCS PROTOCOL STATING "THE INTERNATIONAL COMMISSION AND THE JOINT MILITARY COMMISSION SHALL CLOSELY COOPERATE AND ASSIST EACH OTHER IN CARRYING OUT THEIR RESPECTIVE FUNCTIONS." MOST SPECIFICALLY, THE POLISH AND HUNGARIAN POSITION RESTS ON THE AGREEMENT WITHIN THE ICCS THAT NO FORMAL INVESTIGATIONS WILL BE AGREED TO OR CONDUCTED UNLESS EACH PARTY PROVIDES A SAFETY GUARANTEE AND A LIAISON OFFICER FOR THE ICCS INVESTIGATION TEAM, A CONDITION WHICH CANNOT BE MET WHILE ONE SIDE, THE "PRG", IS BOYCOTTING THE COMMISSION.

3. BACKGROUND: COMMUNIST OBJECTIVES AND MOVES

ALL CIRCUMSTANTIAL EVIDENCE INDICATES THAT THE PRINCIPAL OBJECTIVE OF THE TWO COMMUNIST DELEGATIONS IN THE ICCS IS TO USE THEIR VETO POWER WITHIN THE ICCS TO BLOCK ANY ACTION INIMICAL TO THE "PRG" AND DRV WHENEVER THE LATTER REQUEST THESE DELEGATIONS TO DO SO. THUS, FOR EXAMPLE, AFTER THE "PRG" AND DRV CONCLUDED THAT THE TIME HAD COME TO RESUME ITS OBJECTIVE OF GETTING RID OF THE INHIBITING NETWORK OF ICCS SUB-REGIONAL TEAM SITES, THE "PRG" CALLED FOR THE ICCS TO WITHDRAW FROM THEM IN A NOTE TO THE ICCS OF DECEMBER 10. THE POLES AND HUNGARIANS DUTIFULLY FOLLOWED WITH THE CONVENIENT ARGUMENT IN THE COMMISSION THAT THE TEAM SITES MUST BE DESIGNATED BY THE TPJMC, NOT THE PROTOCOL; AND WHEN THE INDONESIANS AND IRANIANS DISAGREED, THE POLES AND HUNGARIANS USED THE EXCUSE OF LACK OF SAFETY AT SEVERAL SPECIFIC SITES TO BEGIN WITHDRAWING FROM THEM.

4. MEANWHILE, AFTER THE IRANIANS HAD ARRIVED AND BROUGHT THE ICCS BACK

UP TO FULL STRENGTH, THE "PRG" AND DRV OBVIOUSLY REALIZED THAT
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ICCS FORMAL INVESTIGATIONS WOULD FOCUS UNFAVORABLE PUBLICITY ON THEIR CEASEFIRE VIOLATIONS, BOTH THOSE THEN OCCURRING AND THOSE PLANNED FOR THE FUTURE. WHEN THE IRANIANS SOUGHT TO NEGOTIATE A RESUMPTION OF INVESTIGATIONS, THE POLES AND HUNGARIANS RAISED UNNECESSARY PROCEDURAL ROAD-BLOCKS, ARGUING THAT ALL INVESTIGATIONS SHOULD BE CARRIED OUT IN THE CHRONOLOGICAL ORDER IN WHICH THE COMPLAINTS WERE RECEIVED. IN VIEW OF THE HUGE VOLUME AND BACKLOG OF COMPLAINTS, SUCH A PRINCIPLE WOULD MAKE IT ALMOST IMPOSSIBLE FOR THE

COMMISSION TO REACH THE SERIOUS VIOLATIONS WITHIN A MEANINGFUL PERIOD AFTER THEIR OCCURRENCE. THE POLES AND HUNGARIANS NEXT INSISTED THAT NO ICCS TEAMS CAN PERFORM FORMAL INVESTIGATIONS UNLESS THEY ARE PROVIDED WITH SAFETY GUARANTEES AND LIAISON OFFICERS FROM EACH PART - A NEAR PHYSICAL IMPOSSIBILITY IN VIEW OF CONSTANTLY CHANGING CONDITIONS IN LOCAL SITUATIONS AND THE REFUSAL OF THE "PRG" DELEGATIONS TO THE TPJMC TO MOVE OUTSIDE OF SAIGON EXCEPT ON THE ONE OCCA-

SION OF THE CAI LAY INVESTIGATION. WHEN THE INDONESIAN AND IRANIAN DELEGATIONS WERE OBLIGED TO ACCEPT THESE COMMUNIST STIPULATIONS IN ORDER TO OBTAIN AGREEMENT ON ANY RESUMPTION OF FORMAL INVESTIGATIONS, THEY IN EFFECT GAVE THE COMMUNISTS A VETO POWER OVER ANY SUCH FOUR-DELEGATION INVESTIGATIONS. THE STAGE WAS THEN SET FOR A MORE

COMPREHENSIVE COMMUNIST MOVE TO IMMOBILIZE THE COMMISSION.

5. WHEN THE "PRG" DECIDED TO BOYCOTT THE TPJMC AND PUT ADDITIONAL POLITICAL AS WELL AS MILITARY PRESSURE ON THE CEASEFIRE AGREEMENT, THE "PRG" AND DRV WANTED AS LITTLE ACTIVITY AS POSSIBLE ON THE PART OF THE ICCS. ACCORDINGLY, THE POLISH AND HUNGARIAN DELEGATIONS INFORMED THE INDONESIAN AND IRANIAN DELEGATIONS IN UNRECORDED CONSULTATIONS IN JUNE THAT THEY COULD NOT PARTICIPATE IN ANY ACTIVITY "BEARING ON THE WORK OF THE TPJMC", INCLUDING INVESTIGATIONS, AS LONG AS THE TPJMC WAS NOT MEETING. THE INDONESIAN AND IRANIAN DELEGATIONS WERE OBLIGED TO CONFINE THEIR INVESTIGATORY ACTIVITIES TO "OBSERVATIONS" OR INFORMAL VISITS FOLLOWED BY REPORTING WITHIN NATIONAL CHANNELS. THE POLES AND HUNGARIANS CONTINUE TO CONTEND THAT SUCH "OBSERVATIONS" VIOLATE THE GENERAL PROVISION THAT THE ICCS SHALL FUNCTION ON THE BASIS OF UNANIMITY.

6. THE FACTS ARE AS FOLLOWS:

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A) THE ICCS PROTOCOL, WHICH IS MORE SPECIFIC ON ICCS MATTERS THAN THE MAIN CEASEFIRE AGREEMENT AND THEREFORE GOVERNING WHERE THERE ARE APPARENT TEXTUAL INCONSISTENCIES, PROVIDES IN ARTICLE 4 FOR ICCS DEPLOYMENT TO THE SPECIFICALLY LISTED TEAM SITES WITHOUT TPJMC CONCURRENCE OR AGREEMENT, ALTHOUGH IT CLEARLY LEFT THE WAY OPEN (AS STATED IN THE JUNE 13, 1973 COMMUNIQUE) FOR SUBSEQUENT CHANGES BY THE TWO SOUTH VIETNAMESE PARTIES IF THEY SHOULD AGREE ON THEM. IN PRACTICE, THE ABILITY OF THE ICCS TO CONDUCT TIMELY INVESTIGATIONS ANYWHERE IN THE FIELD IS TO A VERY LARGE DEGREE DEPENDENT ON FULL DEPLOYMENT.

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B) THERE IS NO PROVISION IN THE AGREEMENT STATING THAT ICCS
INVESTIGATIVE ACTIVVITY IS DEPENDENT ON THE FUNCTIONING OF THE TPJMC.
THE REQUIREMENT IN ARTICLE 10 (C) THAT THE TWO BODIES SHALL "CLOSELY
COOPERATE" IS A STATEMENT OF THE OBVIOUS. IT IS ALSO OBVIOUS THAT
IF EITHER PARTY COULD VETO INVESTIGATIONS BY SIMPLY REFUSING TO
ATTEND TPJMC MEETINGS, AS WELL AS BY OTHER ACTIVE PROCEDURAL ROAD-
BLOCKS, THE INDEPENDENCE ESSENTIAL TO THE SEMI-JUDICIAL INVESTIGA-
TIVE PROCESS WOULD BE ELIMINATED. THE INTENT OF THE PRO-
TOCOL IS CLEAR ON THIS POINT, SINCE IT PROVIDES AGAINST THE EXERCISE
OF A PASSIVE VETO OF INVESTIGATIONS BY SPECIFYING IN ARTICLE 10 (D)
THAT LIAISON OFFICERS FROM THE TPJMC SHOULD HAVE THE "OPPORTUNITY"
TO ACCOMPANY AN ICCS INVESTIGATING TEAM ONLY "PROVIDED THE INVESTI-

GATION IS NOT THEREBY DELAYED". IN CONFORMITY WITH THIS PROVISION,
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THE ICCS OPERATING PROCEDURES, AGREED TO BY ALL FOUR DELEGATIONS IN THE FIRST MONTHS OF THE ICCS AND STILL IN EFFECT, PROVIDE IN ARTICLE 8.1 THAT WHEN A REQUEST FOR AN INVESTIGATION IS RECEIVED AT ICCS HEADQUARTERS, THE LATTER "SHALL WITHIN A PERIOD OF 24 HOURS FOLLOWING RECEIPT OF THE REQUEST ASSIGN OR DESPATCH A TEAM FROM HEADQUARTERS". THESE OPERATING PROCEDURES NOWHERE MENTION DEPENDENCE ON INSTRUCTIONS FROM THE TPJMC OR ON LIAISON OFFICERS FROM THE PARTIES OR ON SAFETY GUARANTEES. AS FOR THE LATTER, THE PARTIES ARE AUTOMATICALLY REQUIRED BY ARTICLE 10 (A) OF THE PROTOCOL TO PROVIDE "FULL PROTECTION" SO THAT A NEW GUARANTEE OF IT NEED NOT BE REITERATED FOR EACH INVESTIGATION.

C) IF THE TWO PARTIES WERE INDEED IN FULL AGREEMENT, AS THE POLISH AND HUNGARIAN DELEGATIONS CONTEND THEY MUST BE IN ORDER FOR THE ICCS TO ACT, THERE WOULD NOT BE THE NEED FOR SUCH A LARGE AND COMPLEX INTER-

NATIONAL ORGANIZATION TO BE DEPLOYED THROUGHOUT VIETNAM TO PERFORM THE ROLE SPELLED OUT FOR IT IN THE ICCS PROTOCOL. FURTHERMORE, THIS POLISH ARGUMENT IS INCONSISTENT WITH THE POLISH VIEW THAT THE ICCS MEMBERS SHOULD TRY TO MEDIATE ACTIVELY BETWEEN THE TWO PARTIES.

D) AS THE NON-COMMUNIST DELEGATIONS CONTEND, THE GENERAL STATEMENT IN THE AGREEMENT TO THE EFFECT THAT THE ICCS MUST OPERATE "IN ACCORDANCE WITH THE PRINCIPLE OF UNANIMITY" DOES NOT MEAN THE VETO CAN BE USED TO FORCE INACTION OR NON-PERFORMANCE OF MANDATORY DUTIES OF THE ICCS; NOR DOES IT ENTITLE THE COMMUNIST DELEGATIONS TO VETO NATIONAL DELEGATION INDEPENDENT "OBSERVATIONS". THE AGREEMENT MAKES IT CLEAR THAT THE SIGNATORIES ENVISAGE THE POSSIBILITY THAT UNANIMITY WOULD NOT BE ACHIEVED. ARTICLE 3 (B) OF THE PROTOCOL SPECIFICALLY PROVIDES THAT WITH REGARD TO REPORTS, "IN CASE NO UNANIMITY IS REACHED, THE COMMISSION SHALL FORWARD THE DIFFERENT VIEWS" TO THE PARTIES. FURTHERMORE, IN CONFORMITY WITH THE PROTOCOL, ARTICLE 8.3 OF THE OPERATING PROCEDURES PROVIDES THAT "NATIONAL DELEGATIONS AND THEIR MEMBERS SHALL BE AUTHORIZED TO RECEIVE ... WITHOUT HINDRANCE INFORMATION AND PETITIONS FROM ORGANIZATIONS, GROUPS AND INDIVIDUALS". THE COMMUNIST DELEGATIONS HAVE UNSUCCESSFULLY ATTEMPTED TO AMEND THE OPERATING PROCEDURES.

E) INDONESIA AND IRAN WOULD NOT BE ASSIGNING THEIR HARD-TO-SPARE TRAINED OFFICERS TO UNDERTAKE THESE ARDUOUS AND SOMETIMES HAZARDOUS

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INDEPENDENT OBSERVATION TRIPS TO REPORT ON CEASEFIRE VIOLATIONS IN WHICH THEY HAVE NO SELFISH NATIONAL INTEREST IF IT WERE NOT FOR THE DEEP CONVICTION OF THESE DELEGATIONS THAT THE AGREEMENT LEGALLY REQUIRES THEM TO DO SO IN THE FACE OF COMMUNIST CRITICISM. SEE THE INDONESIAN DELEGATION PUBLIC STATEMENT OF MARCH 24 (SAIGON 3870).

F) THE MOST RECENT EVIDENCE OF COMMUNIST DELEGATION OBSTRUCTIONISM WAS BROUGHT OUT IN THE AUGUST 13 ICCS MILITARY COMMITTEE SESSION IN WHICH THE IRANIAN CHAIRMAN PROPOSED THAT THE COMMITTEE DISCUSS A PROPOSAL TO INVESTIGATE "PRG" AS WELL AS RVN COMPLAINTS FORTHWITH. THE TWO COMMUNIST DELEGATIONS WERE UNABLE TO REFUTE THE CAREFULLY STAFFED IRANIAN STATEMENTS MADE IN THE SESSION FOR THE RECORD AND QUOTED IN THE REFTEL.

7. CONCLUSION: THE MISSION THEREFORE BELIEVES THAT ANOTHER APPROACH SHOULD BE MADE IN THE NEAR FUTURE TO PERSUADE THE POLES AND HUNGARIANS

TO COLLABORATE WITH THE INDONESIAN AND IRANIAN DELEGATIONS IN INVESTIGATING COMPLAINTS FILED BY EITHER PARTY OF CEASEFIRE VIOLATIONS, COMMENCING WITH THE MOST RECENT SERIOUS COMPLAINTS FOR WHICH INVESTIGATIONS WOULD BE 1) MOST FEASIBLE FROM THE POINT OF VIEW OF COLLECTING THE EVIDENCE, AND 2) MOST EFFECTIVE FROM THE POINT OF VIEW OF DETERRING FURTHER VIOLATIONS. THE EMBASSY COMMENTED IN PARA 9 OF SAIGON 5680 (NOTAL) ON THE DEGREE OF LATITUDE IN ICCS POLICY MATTERS WHICH MAY BE GIVEN TO THE POLES AND HUNGARIANS BY THE SOVIETS, WHICH SUGGESTS THAT AN APPROACH IN MOSCOW COULD SUPPLEMENT APPROACHES TO THE POLES AND HUNGARIANS. MEANWHILE, THE USG SHOULD CONTINUE TO ACTIVELY ENCOURAGE THE IRANIAN AND INDONESIAN PERFORMANCE IN THE ICCS. AND WE WILL DO SO HERE.
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